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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,088

04/20/2006

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EXAMINER

O HERN, BRENT T

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

11/30/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/567,088	Applicant(s) TEEUWEN, GERARDUS LEONARDUS MATHIEU	
	Examiner Brent T. O'Hern	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5 and 12-14 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims

1. Claims 1, 3-5 and 12-14 are pending with claims 12-14 withdrawn and new. Applicant confirmed the election of Group I, directed to a product, without traverse in Applicant's Paper filed 8/18/2009. New claims 12-14 are method claims per non elected Group III.

WITHDRAWN OBJECTIONS/REJECTIONS

2. All objections/rejections of record in the Office action mailed 2/18/2009 have been withdrawn due to Applicant's amendments in the Paper filed 8/18/2009.

NEW OBJECTIONS

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the phrases "circumferential top surface" in claim 1, line 4 and "upwardly facing opening" in claim 1, line 6 are not supported by the text of the Specification. If Applicant believes that support is present in the Figures then Applicant is advised to consider amending the text of the Specification while being careful not to add new matter.

Claim Objections

4. Claim 1 is objected to because of the following informalities: claim 1, line 5 states "said circumferential surface". It appears as though Applicant meant to state "said circumferential top surface".

Appropriate correction is required.

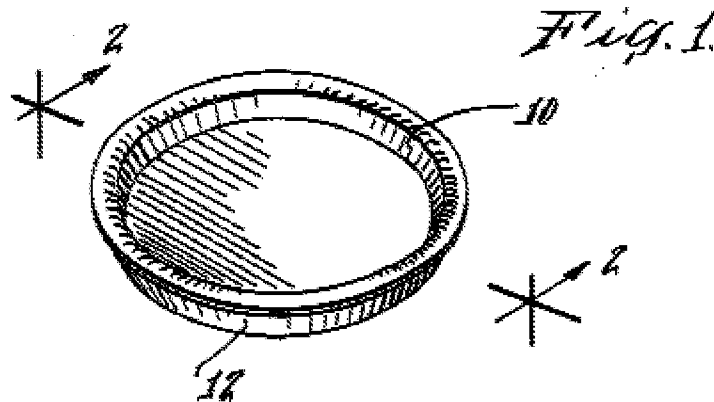
NEW REJECTIONS

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

6. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Caporaso (US 4,435,434).

Regarding claim 1, Caporaso ('434) teaches an edible product (See FIGs 1-2 and col. 4, ll. 30-51, edible shell #10.),



comprising a body including an edible material (See col. 4, ll. 30-51, edible shell material #10.), the body having a crusty surface that has been obtained by heating (See col. 4, ll. 30-51, crusty surface of baked shell #10.), the surface comprising a circumferential top surface, a bottom surface and a peripheral surface, the circumferential surface having an undulating shape wherein the body is provided with a central cavity having an upwardly facing opening for introducing an edible filling therein, the circumferential surface defining the opening of the central cavity (See FIG-1 and col.

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4, ll. 30-51, pastry shell #10 with circumferential top, bottom and peripheral surface and central cavity. The undulating shape of circumferential surface is illustrated in FIGs 1-2.).

Regarding claim 3, Caporaso ('434) teaches wherein the lateral boundary walls of the central cavity are essentially smooth (*See FIG-1 and col. 4, ll. 30-51 essentially smooth walls of the cavity.*).

Regarding claim 4, Caporaso ('434) teaches wherein the central cavity tapers outwards towards the opening thereof (*See FIG-1 and col. 4, ll. 30-51, outward tapering central cavity.*).

Regarding claim 5, Caporaso ('434) teaches wherein the edible material is bread (*See col. 4, ll. 30-51, edible pastry bread.*).

Claim Rejections - 35 USC § 103

7. Claim 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Caporaso (US 4,435,434) in view of Peleg (US 4,841,112) and Voyatzakis et al. (US 2004/0009256).

If Caporaso's ('434) product is not interpreted as having an undulating shape then the claims are rejected under 35 USC 103 for the reasons explained below.

Regarding claim 1, Caporaso ('434) teaches an edible product (*See FIGs 1-2 and col. 4, ll. 30-51, edible shell #10.*), comprising a body including an edible material (*See col. 4, ll. 30-51.*), the body having a crusty surface that has been obtained by heating (*See col. 4, ll. 30-51, crusty baked shell.*), the surface comprising a circumferential top surface, a bottom surface and a peripheral surface, wherein the body

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is provided with a central cavity having an upwardly facing opening for introducing an edible filling therein, the circumferential surface defining the opening of the central cavity (*See FIG-1 and col. 4, ll. 30-51, pastry shell #10 with circumferential top, bottom and peripheral surface and central cavity.*), however, fails to expressly disclose the circumferential surface having an undulating shape.

Peleg ('112) teaches an edible, crusty, baked bread product with a cavity for food with an undulating shape (*See FIGs 2 and 5, col. 4, l. 43 and col. 5, l. 20.*) for the purpose of providing a food product having a desirable shape, is suitable for being transported and can be used in a microwave (*See Abstract and col. 4, l. 37 to col. 5, l. 32.*).

Voyatzakis ('256) teaches making edible bread shells/crusts having an undulating shape (*See para. 35.*) for the purpose of providing a shell/crust that has an aesthetically pleasing wavy effect (*See para. 35.*).

Therefore, it would have been obvious to provide Caporaso's ('434) product with an undulating shape as taught by Peleg ('112) and Voyatzakis ('256) in order to provide a food product having a desirable pleasing wavy appearance.

Regarding claim 3, Caporaso ('434) teaches wherein the lateral boundary walls of the central cavity are essentially smooth (*See FIG-1 and col. 4, ll. 30-51 essentially smooth walls of the cavity.*).

Regarding claim 4, Caporaso ('434) teaches wherein the central cavity tapers outwards towards the opening thereof (*See FIG-1 and col. 4, ll. 30-51, outward tapering central cavity.*).

Regarding claim 5, Caporaso ('434) teaches wherein the edible material is bread
(*See col. 4, ll. 30-51, edible pastry bread.*).

ANSWERS TO APPLICANT'S ARGUMENTS

8. In response to Applicant's arguments (*See pp. 5-6 of Applicant's Paper filed 8/18/2009.*) regarding Rettey ('493) and Ellner ('012), it is noted that said arguments are moot as said references are no longer cited.

9. In response to Applicant's arguments (*See pp. 5-6 of Applicant's Paper filed 8/18/2009.*) regarding Peleg ('112) as a primary reference, it is noted that said reference is no longer cited as a primary reference, thus, all arguments regarding such are moot.

10. In response to Applicant's arguments (*See p. 6, para. 3 of Applicant's Paper filed 8/18/2009.*) that none of the previously cited references teach wherein filling can be seen by the consumer through an opening, it is noted that said arguments are not commensurate in scope with the claims as a visible filling are not claimed limitations. The opening language is new. The newly cited Caporaso ('434) reference teaches, as discussed above, a food product with an open cavity.

11. In response to Applicant's arguments (*See p. 6, para. 5 of Applicant's Paper filed 8/18/2009.*) that apparatus claims 3-5 and new method claims 12-14 should be allowable since they depend on claim 1, it is noted that claims 3-5 are not apparatus claims but rather product claims. Claims 12-14 are drawn to withdrawn claims. No further precise arguments are presented regarding these claims. Amended claim 1 and the dependent claims are not allowable for the reasons discussed above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Brent T. O'Hern/
Examiner, Art Unit 1794
November 21, 2009